

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1022 of 1995

in

SPECIAL CIVIL APPLICATION No 3170 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 & 2 YES 3 TO 5 NO

DIVISIONAL CONTROLLER

Versus

SHIVAJI ANDAJI BHIL, DECEASED THROUGH HEIRS L/R.

Appearance:

MR YS LAKHANI for Petitioners
MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MISS JUSTICE R.M.DOSHIT

Date of decision: 23/10/97

ORAL JUDGEMENT

This Letters Patent Appeal is filed by the State

Road Transport Corporation against the judgment and order passed by the learned Single Judge in Special Civil Application No. 3170 of 1995, decided on 2nd September, 1997. By the said order, the learned Single Judge allowed the petition filed by the workman and set aside the order of dismissal of the petitioner from service passed by the authority on 29th March, 1995.

The first respondent was the original petitioner. He was serving with the appellant-Corporation. A neighbor of the petitioner filed a complaint against the petitioner at Harij Police Station for offences punishable under Sections 66-B and 85 (1) of the Bombay Prohibition Act, 1949. Pursuant to the said complaint, a case was registered and ultimately the petitioner came to be convicted by the learned Judicial Magistrate, First Class, Harij as he pleaded guilty. After the conviction recorded by a competent criminal court, a show cause notice was issued by the appellant-Corporation to the petitioner on 4th March, 1992, and he was called upon as to why his services should not be terminated in accordance with the provisions of Service Regulation No. 81 of the Gujarat State Transport Employees Services Regulations, as he was convicted by a competent criminal court and was sentenced to undergo imprisonment till rising of the court and a fine of Rs.35/-, in default, simple imprisonment for three days. The petitioner submitted his reply and ultimately by an order dated March 29, 1995, the services of the petitioner were terminated. Being aggrieved by the above order of termination, the petitioner approach this court by filing the above petition.

When the matter came up for hearing before the learned Single Judge, after hearing the parties, the learned Single Judge allowed the petition, inter alia, observing that it was not disputed even by the Corporation that conviction was recorded against the petitioner on the basis of plea of guilty. No regular inquiry as contemplated under Article 311 of the Constitution was instituted against him. The appellant was a Corporation and such, instrumentality of the State within the meaning of Article 12 of the Constitution of India and hence, in all sphere of its activities, it was bound to act justly, fairly and reasonably. Regulation 81 which conferred power on the disciplinary authority of the Corporation to remove an employee from service without notice in case he is convicted in a criminal case was of a serious nature. Such power must, therefore, be exercised considering other relevant circumstances, such as proximity of time which could connect the commission

of the alleged misconduct, and the decision based on such conviction. Applying those tests, the learned Single Judge concluded that as the petitioner was not on duty at the time when he had consumed alcohol and as it was not referable to discharge of his duty, it could not be said that for such conduct his services could be terminated. It was not misconduct within the meaning of Regulation 81 and hence a solitary instance ought not to have resulted into termination of services of the delinquent. Taking into account all the considerations, the learned Single Judge held that the appellant Corporation had committed an error of law in terminating the services of the petitioner. Said action was unfair, arbitrary, unjust and violative of Article 14 of the Constitution. Accordingly, the petition was allowed.

We have heard Mr. Y.S.Lakhani, learned counsel for the appellant and Mr. B.G.Jani, learned counsel for the respondent. Mr. Lakhani contended that before the learned Single Judge, constitutional validity of Regulation 81 was not challenged, which empowered the authority to terminate services of an employee who had been convicted by a competent criminal court. It is true that the petitioner was convicted on plea of guilty, still however, conviction is a conviction. Once an employee is convicted by a competent criminal court, Regulation 81 would operate. Hence, action taken by the Corporation cannot be said to be illegal, unlawful or improper. Mr. Lakhani stated that even after conviction, a show cause notice was issued to the petitioner and he was called upon to show cause as to why action should not be taken against him under Regulation 81 and only thereafter the action was taken. The action was therefore, legal, valid and in accordance with law and of the learned Single Judge has committed an error of law and jurisdiction in interfering with the order passed by the authority.

Mr. Jani, learned counsel for the respondent submitted that the learned Single Judge has passed an order after hearing the parties, rightly observing that the act in question had nothing to do with discharge of duty by the workman and hence it could not be made basis for terminating services. He further submitted that the complaint was filed neither by Corporation nor by police authority. A neighbor of the petitioner who was a "stranger" moved the authorities on the basis of which a case was registered. He, therefore, submitted that the learned Single Judge has not committed any error in setting aside the order passed by the authorities and in granting reinstatement. Mr. Jani stated that during the

pendency of proceedings, the workman had died. He, therefore, submitted that even if this court is of the view that the appeal deserves to be allowed, a direction may be issued and/or appropriate observation be made so that the Corporation may consider the case of widow of the petitioner for an appointment on compassionate ground.

Having heard the learned counsel for the parties, we are of the view that the judgment and order passed by the learned Single Judge deserve to be set aside. In our view the submission made by Mr. Lakhani is well-founded that once an employee is convicted by a competent criminal court, the Corporation has right to invoke the provisions of Regulation 81. It is not necessary that a substantive sentence ought to have been imposed on a person who has been convicted by a court. In the instant case, the petitioner was convicted for offences punishable under Section 66 read with Section 85 of the Bombay Prohibition Act and punishment was imposed on him. In the light of such punishment, an order is passed by the Corporation, which could not have been interfered with by the High Court. The appeal, therefore, deserves to be allowed and is accordingly allowed. The order quashing and setting aside termination of services of the petitioner passed by the learned Single Judge is set aside and the petition is ordered to be dismissed.

So far as compassionate appointment is concerned, Mr. Jani submitted that the widow of the petitioner will make an application. A direction may be issued to the Corporation to appoint her. In our view, no such direction can be issued. At the same time, however, it is clarified that it is open to the widow of the petitioner to make an application for compassionate appointment. Mr. Lakhani stated at the Bar that as and when such application will be received by the Corporation, it will be sympathetically considered by the Corporation. In view of this statement, it is directed that on receiving such application, the appellant Corporation will consider the same sympathetically and pass an appropriate order thereon.

In the result, this appeal is allowed. Order passed by the learned Single Judge is set aside. No order as to costs.

JOSHI